

**UNITED STATES GOVERNMENT**  
**National Labor Relations Board**



**Memorandum**

**To:** Lester A. Heltzer, Executive Secretary  
Office of the Executive Secretary

**From:** William A. Baudler, Acting Regional Director  
Region 32

**Date:** July 2, 2010

**Subject:** *Stericycle, Inc.*  
*Case 32-CA-25058*

**ORDER REFERRING TO THE BOARD CHARGED PARTY'S**  
**PETITION TO REVOKE INVESTIGATORY SUBPOENA**

On June 18, 2010, Region 32 issued a subpoena *duces tecum* in furtherance of its investigation of the above-referenced case. On June 25, 2010, the charged party Employer filed a petition to revoke that subpoena.

Pursuant to Section 102.31(b) of the National Labor Relations Board's Rules and Regulations, Series 8, as amended and Memorandum OM 10-11, dated October 23, 2009, Region 32 is hereby forwarding Respondent Stericycle, Inc.'s Petition to Revoke Subpoena to the Board for ruling. Region 32's Opposition to the Petition to Revoke is being submitted under separate cover this same date.

WAB  
W.A.B.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STERICYCLE, INC.

and

TEAMSTERS LOCAL 70

Case(s) 32-CA-25058

DATE OF MAILING: July 2, 2010

**AFFIDAVIT OF SERVICE ORDER REFERRING TO THE BOARD CHARGED PARTY'S  
PETITION TO REVOKE INVESTIGATORY SUBPOENA**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid mail upon the following persons, addressed to them at the following addresses:

Mr. Arch Y. Stokes  
Shea Stokes Roberts & Wagner  
510 Market Street, 3rd Floor  
San Diego, CA 92101-7025  
[astokes@stokesroberts.com](mailto:astokes@stokesroberts.com)

Mr. Peter G. Fischer, Esq.  
Shea, Stokes Roberts & Wagner  
3593 Hemphill Street  
College Park, GA 330337  
[pfischer@stokesroberts.com](mailto:pfischer@stokesroberts.com)

Mr. Jason Rabinowitz, Esq.  
Beeson Tayer & Bodine  
1404 Franklin Street, 5th Floor  
Oakland, CA 94612  
[jrabinowitz@beesonayer.com](mailto:jrabinowitz@beesonayer.com)

Lester A. Heltzer, Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N. W.  
Washington, DC 20005  
E-Filed

Subscribed and sworn to before me this day 2nd of July 2010.

DESIGNATED AGENT

/s/ Shirley M. Owens

NATIONAL LABOR RELATIONS BOARD

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

STERICYCLE, INC.

Case No. 32-CA-25058

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AUTO TRUCK DRIVERS,  
LINE DRIVERS, CAR HAULERS, AND HELPERS,  
LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA

**RESPONDENT STERICYCLE, INC.'S  
PETITION TO REVOKE SUBPOENA**

Pursuant to the National Labor Relations Board's Rules and Regulations § 102.31(b), Respondent Stericycle Inc. hereby petitions to revoke the subpoena *duces tecum* issued by the Board in the above-referenced case and received by Respondent on Monday, June 21, 2010. [hereinafter "the subpoena"]. This petition to revoke the subpoena is timely because it is filed with the NLRB less than five (5) days after the subpoena was received by Respondent in accordance with the Casehandling Manual § 11782, and Board Rules and Regulations § 102.31(b).

In evaluating the sufficiency of this Petition, it is important to keep in mind three baseline considerations:

First, this is the ninth ULP filed against Respondent in the past eighteen (18) months. Every previous charge was either administratively dismissed for a complete lack of proof, or withdrawn for insufficient evidence. Respondent has fully cooperated with the Board in every

previous occasion by providing more than six thousand (6,000) pages of records, sworn affidavits, and six live witnesses under oath. Respondent will continue to cooperate with the important investigations of the Board, but asks that such investigations, including its document requests, be conducted in the focused, narrow, and dispassionate fashion prescribed by the Board's own regulations.

Second, Respondent's counsel has asked for copies of the statements and documents that support the false accusations contained in 32-CA-245058, and all other ULPs filed against Respondent since December 2008. Such information is essential for Respondent to accurately respond to the charges against it, and to confront the witnesses whose allegations form the basis of the charge. On every occasion, the Board has refused these disclosure requests based upon "policy considerations." Now, when asked to respond to a wide-ranging subpoena *duces tecum* Respondent is kept in the dark, left to guess at the nature of the specific accusations to which these documents are meant to respond. The basis of Respondent's Petition to Revoke must be that the subpoena does not relate to any matter under investigation, that the subpoena does not describe the evidence sought with sufficient particularity, or if for any other reason sufficient in law the subpoena is otherwise invalid. However, Respondent has not been provided with sufficient detail concerning the Charging Parties' accusations to enable Respondent to formulate an adequate defense.

Finally, the purpose of the NLRB's investigation is to determine whether Respondent's motivation for the layoffs was in any way motivated by Union animus, not to audit Respondent's human resources records. While many of the requests, when taken individually, are appropriate to the scope of the investigation, the far-reaching, in-depth examination taken as a whole – that

includes each driver's daily time cards and years of driver safety records – makes this request more punitive, than investigative.

Despite these major complications, Respondent remains willing to cooperate with the Board's investigation, and petitions the Regional Director to revoke the subpoena *duces tecum*, as described more completely below. All portions of the subpoena to which Respondent does not specifically petition for revocation will be produced in accordance with the subpoena, should such documents exist under the control of Respondent.

#### **I. THE EXTENSIVE SUBPOENA *DUCES TECUM* REQUESTS MATERIAL THAT IS BEYOND THE SCOPE OF THE AGENCY INVESTIGATION**

The Regional Director has discretion to issue investigative subpoenas during ULP investigations so long as those subpoenas seek evidence from parties and third party witnesses that will "materially aid" the determination for an administrative decision on the merits of a ULP charge. ULP Casehandling Manual § 11770.2.

**A. Request 1.** *Copies of all acquisition contracts between the Employer and Med Waste Disposal, Advanced Waste Solutions, Integrated Waste Control and Med Tech, hereafter called the acquired companies.*

A subpoena *duces tecum* is permitted to seek relevant evidence and should be drafted as narrowly and specifically as is practicable. ULP Casehandling Manual §11776. To this end, Board policy admonishes Agents for using the word “all” such document requests, as is found in

this instance. *Id.* Instead, the ULP Casehandling Manual § 11776, suggests a refined response to a document request that involves a sworn affidavit or an admissible summary of such evidence so long as the "pertinent records are made available to the Board agent to ensure accuracy."

Respondent petitions to revoke this request on the grounds that the vast majority of information contained in the request acquisition documents are beyond the scope of this investigation and irrelevant. A majority of the material contained in these confidential agreements is completely irrelevant to the investigation. Therefore, to the extent that such evidence exists in Respondent's control, only that narrowly tailored evidence that proves that such contracts exist, describes the routes acquired, and shows the redacted portions of employee retention agreements will be provided.

**B. Requests 4, 5, 6, & 7 :** *Document requests numbered 4, 5, 6, and 7 generally ask Respondent to produce records showing Respondent's analysis of routes gained, overlapping, eliminated, and relocated as a result of Respondents acquisition of Regional competitors.*

Respondent petitions for the revocation of this request in that it asks Respondent to provide the names of all customers in Northern California – facts that are completely irrelevant to determining the veracity of the Union's dubious allegations. Customer lists are closely protected proprietary information and are not generally made public. Public disclosure of these customer lists would greatly disadvantage Respondent in the very competitive regulated waste disposal industry.

The apparent purpose of this request is so that the Board can better understand the internal analysis Respondent used in deciding which routes would be eliminated. Respondent

will provide the requested materials including the addresses of stops served on the various routes; the names of the drivers regularly assigned to work the routes; and the location of the facility out which the drivers are based that service these various routes. However, Respondent respectfully petitions to revoke subpoena requests 4, 5, 6, and 7 in so far as they ask Respondent to unnecessarily produce the names of its various customers around Northern California.

**C. Requests 16 through 33.**

Rather than narrowly tailoring its request to the documentation that supports Respondent's low ratings of the laid-off drivers, the Board has asked for a wide swath of documents regarding drivers who did not work at San Leandro on April 14, 2010. Further, the Board has asked for records from ALL drivers at the San Leandro facility, rather than asking Respondent simply to provide the objective documentary evidence that supports the low ratings each of the laid-off drivers received from the transportation supervisors. Therefore, Respondent petitions for the revocation of this subpoena in so far as it requests material for drivers who were not employed at the San Leandro facility as of April 14, 2010, and in so far as it requests extensive material on drivers who were not laid-off.

**D. Requests 9, 16, 17, 18, 21, 22, & 23 for time cards are overly broad, and, in places, completely irrelevant to the material apparently sought after by the Board.**

Production of time cards for all thirty five San Leandro drivers employed as of April 14, 2010, over the course of six months will result in at least four hundred and twenty separate pay period reports. Clearly, the Board is interested reviewing objective information that supports the transportation supervisor's assessments of the laid-off drivers. The Board's incredibly broad

request would only result in a huge amount of data that is, for the most part, completely unnecessary to meet the Board's investigative purpose. Further, an assessment of the overtime practices appear rooted far outside the center of this ULP investigation. In fact, time cards are completely irrelevant to requests 17, 18, and 21 that pertain to drivers' communications, customer service, and paperwork categories of performance, respectively,

Instead, Respondent petitions for the revocation of the subpoena to include only time cards for the laid-off drivers for the months of January, February, March, and April, 2010.

## **II. THE EXTENSIVE SUBPOENA *DUCES TECUM* CONTAINS NUMEROUS REQUESTS THAT ARE DUPLICATIVE, VAGUE, or UNCLEAR**

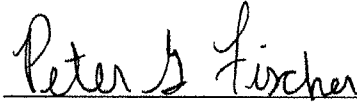
**A. Request 16 through 26.** Generally, subpoena requests number 16-26 ask for all documentation reviewed by the Transportation Supervisors regarding the eleven (11) different categories found on the Driver Rate Sheets for all drivers assigned to Respondent's San Leandro facility. The vast majority of this information is found in each drivers' individual personnel file. Similarly, requests 27 through 33 will produce the same information found in the individual personnel files, accident reports, and time cards. The subpoena should be revoked and modified in such a way to prevent the burdensome, and unnecessary production of duplicative materials. Therefore, Respondent will comply with these multiplicitous requests by providing one copy of the relevant records as a way of fulfilling the Board's investigative purpose.

**B. Request 31.** *Copies of books, records, and other documents reflecting the name of each driver specifically assigned to report to Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala as of April 9, 2010.*

Respondent petitions for the revocation of this request in that it is vague and imprecise. Drivers employed at the San Leandro facility are not assigned to particular supervisors. Instead, supervisors rotate through different schedules on a weekly basis. Drivers report to the transportation supervisor(s) on duty at the time. Therefore, subpoena request number 31, as asked, is vague and imprecise to the point that it is impossible for Respondent to provide an accurate response without further clarification.

DATED: June 25, 2010

STOKES, ROBERTS & WAGNER

A handwritten signature in cursive script, appearing to read "Peter G. Fischer", is written over a horizontal line.

Arch Y. Stokes  
Paul E. Wagner  
Peter G. Fischer

3593 Hemphill Street  
Atlanta, GA 30337  
(404) 766-0076  
(404) 766-8823 (FAX)

ATTORNEYS FOR EMPLOYER,  
Stericycle, Inc.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

STERICYCLE, INC.

Case No. 32-CA-25058

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AUTO TRUCK DRIVERS,  
LINE DRIVERS, CAR HAULERS, AND HELPERS,  
LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA

**PROOF OF SERVICE**

I am employed in the County of Fulton, State of Georgia. I am over the age of eighteen years and not a party to the within action; my business address is 3593 Hemphill Street, Atlanta, Georgia 30337.

On June 25, 2010, I caused the following document(s) to be served:

**RESPONDENT STERICYCLE, INC.'S  
PETITION TO REVOKE SUBPOENA**

on the interested party below in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

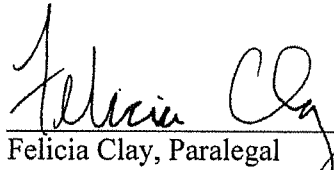
Alan B. Reichard, Regional Director  
National Labor Relations Board, Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5211

- ☒ BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Atlanta, Georgia, in the ordinary course of business pursuant to Code of Civil Procedure Section 1013(a). I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- ☐ BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to Board's Rules and Regulations, Series 8, as amended, Section 102.24. The telephone number of the sending facsimile machine was (404) 766-8823. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.
- ☒ BY THE NLRB'S ELECTRONIC FILING SYSTEM on its website:  
<http://www.nlr.gov>.
- ☒ BY ELECTRONIC MAIL to: [Nicholas.Tsiliacos@nlrb.gov](mailto:Nicholas.Tsiliacos@nlrb.gov).
- ☐ BY EXPRESS MAIL: I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure Section 1013(c).

Executed on June 25, 2010, at Atlanta, Georgia.

I declare under penalty of perjury under the laws of the State of Georgia that the foregoing is true and correct.

  
\_\_\_\_\_  
Felicia Clay, Paralegal

Attorneys for the Employer:

Stokes Roberts & Wagner  
3593 Hemphill Street  
Atlanta, GA 30337  
404.766.0076 Telephone  
404.766.8823 Facsimile

600 West Broadway, Suite 1150  
San Diego, CA 92101  
619.232.4261 Telephone  
619.232.4840 Facsimile

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Attn: Custodian of Records

To Stericycle, Inc.

1366 Doolittle Drive, San Leandro, CA 94577

As requested by Nicholas L. Tsiliacos, A Board Agent

whose address is 1301 Clay Street, Suite 300N, Oakland, California 94612-5224

(Street)

(City)

(State)

(ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE, and give a Sworn Board Affidavit

to a Board Agent

of the National Labor Relations Board

at the Oakland Regional Office, 1301 Clay Street, Suite 300N

in the City of Oakland

on the 9th day of July 20 10 at 9 :00 (a.m.) ~~(p.m.)~~ or any adjourned

or rescheduled date to testify in Stericycle, Inc.: 32-CA-25058

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHED

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 630457

Issued at Oakland, California



this 18th day of June

20 10

*Lesfer A. Neltzer*

**NOTICE TO WITNESS.** Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

## DEFINITIONS AND INSTRUCTIONS:

- A. When used in this subpoena, the word "document" or "documents" means any existing printed, typewritten, handwritten or otherwise recorded material of whatever character, including, but not limited to, letters, correspondence, memoranda, telegrams, facsimile transmissions, mailgrams, minutes, notes, statements, affidavits, agreements, summaries, records of telephone conversations, telephone bills, recordations of personal conversations, interviews or meetings, transcripts, diaries, reports, charts, contracts, calendars, interoffice communications, books, pamphlets, brochures, employee handbooks, records, tax records, payroll records, personnel files, time sheets, schedules, bookkeeping and/or accounting work papers, canceled checks, accounts, accounts receivable and/or payable records, ledgers, journals, purchase orders, invoices, bills of lading, billing slips, delivery records, receiving records, photographs, microfilm, audio or video tapes, computer tapes or disks and electronic mail, and all data contained thereon that may be retrieved, including material stored on hard disks, and any carbon, photographic or other duplicate copy of such material in the possession of, control of, or available to the subpoenaed party or any attorney, agent, representative or other person acting in cooperation with, in concert with, or on behalf of the subpoenaed party.
- B. Whenever used in this subpoena, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; references to parties shall be deemed to include any and all of their officers, agents and representatives; the masculine shall be deemed to include the feminine and vice versa; the disjunctive "or" shall be deemed to include the conjunctive "and" and vice versa; and each of the words "each", "any", "every", and "all" shall be deemed to include each of the other words.
- C. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation. The terms "copy" or "copies" shall refer to exact and complete copies of original documents. Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purposes of verifying the accuracy of such copies. Any copies of original documents which are different in any way from the original, whether by interlineation, receipt, stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals.
- D. Documents subpoenaed shall include all documents in your physical possession, custody, or control, your present or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other

persons and companies directly or indirectly employed by, or connected with you.

- E. If any document responsive to any request herein was withheld from production of the asserted ground that it is privileged, identify and describe:
  - (a) the author;
  - (b) the recipient;
  - (c) the date of the original document;
  - (d) the subject matter of the document.
- F. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph that each document or set of documents is responsive to, and labels referring to that subpoena paragraph should be affixed to each document or set of documents.
- G. This request is continuing in character and if additional responsive documents come to your attention following the date of production, such documents must be promptly produced.
- H. Any custodian of records of any entity subpoenaed shall be one or more designated agents with knowledge sufficient to testify in detail concerning the contents of documents to be produced.
- I. The term "Employer" as used herein refers to Stericycle, Inc.

Subpoenaed Documents

**ATTACHMENT**

1. Copies of all acquisition contracts between the Employer and Med Waste Disposal, Advanced Waste Solutions, Integrated Waste Control and Med Tech, hereafter called the acquired companies.
2. Copies of books, records, and other documents reflecting any agreements or requirements imposed on the Employer to retain any drivers employed by the acquired companies.
3. Copies of books, records, and other documents reflecting the names, dates of hire, route assignments, and addresses of customers served on the driver's route, of any driver hired by the Employer at its San Leandro Facility or transferred to the Employer's San Leandro Facility from another Employer facility during the period April 9, 2010 and June 18, 2010.
4. Copies of books, records, and other documents reflecting any new routes gained by the Employer through acquisition of the acquired companies, and reflecting the following for the period December 2008 through December 2009:

The names of customers served on the routes;  
The complete addresses of customers served on the routes;  
The name(s) of the drivers assigned to work the routes; and  
The location of the driver assigned to the routes.

5. Copies of books, records, and other documents reflecting the number of routes acquired by the Employer through its December 2008 to December 2009 acquisition of the acquired companies that overlapped the Employer's existing San Leandro Facility routes, and reflecting the following for the period January 1, 2010 through April 9, 2010:

The names of customers served on the overlapping routes;  
The complete address of customers served on the overlapping routes;  
The name(s) of the drivers assigned to work the overlapping routes; and  
The location of the driver assigned to the overlapping route.

6. Copies of books, records, and other documents reflecting the San Leandro Facility routes eliminated by the Employer on or about April 9, 2010, as a result of its acquisition of the acquired companies, and reflecting the following:

The names of customers served on the eliminated routes;  
The complete address of customers served on the eliminated routes; and  
The name(s) of the drivers assigned to work the eliminated routes prior to their elimination on April 9, 2010.

7. Copies of books, records, and other documents reflecting the routes formerly run from the Employer's San Leandro Facility which are now run out of the Employer's facilities in Hollister, Lakeport, and Fresno, and reflecting the following:

The names of customers served on the those routes;  
The complete address of customers served on those routes;  
The name(s) of the drivers assigned to work those routes; and  
The location of the driver assigned to those routes.

8. Copies of books, records, and other documents reflecting all or part of the San Leandro Facility routes formerly assigned to Juan Espana, Victor Hernandez, Wilian Rivera, Julio Siquenza, Selvin Zecena, and Gustavo Rodriguez which are currently assigned to other drivers and reflecting the following:

The description of the routes;  
The complete address of customers served on the routes;  
The name(s) of the drivers assigned to work the routes;  
The date of hire of the drivers assigned to work the routes; and  
The location of the driver assigned to work the route.

9. Copies of books, records, and other documents, including but not limited to time cards and payroll records, reflecting any overtime worked by the Employer's San Leandro Facility drivers during the period January 1, 2010 to June 18, 2010.

10. Copies of books, records, and other documents used by the Employer to analyze its Northern California Network during the period January 2010 through April 1, 2010 which resulted in the ultimate elimination of seven San Leandro Facility routes.

11. Copies of books, records, and other documents explaining the North State Planning spread sheet entries prepared by District Manager Dave Williams.

12. Copies of books, records, and other documents, including but not limited to minutes of meetings, emails, review files, and memorializations of conversations, reflecting what was discussed at any meeting held between San Leandro Facility Manager Dave Guerrero, District Manager Dave Williams, Area Vice President Dan Ginnetti and/or Human Resource Manager Edward Zapata to discuss the performance

ratings and/or review the results upon which the Employer based its selection decisions for its April 9, 2010 layoff.

13. Copies of books, records, and other documents, including but not limited to minutes of meetings, emails, review files, and memorializations of conversations, reflecting why the Employer delayed announcing its decision to lay off Juan Espana, Victor Hernandez, Wilian Rivera, Julio Siquenza, Selvin Zecena, and Gustavo Rodriguez to April 9, 2010.

14. Copies of books, records, and other documents reflecting whether the Employer has ever used the 11 criteria rating process used at the San Leandro Facility for the April 9, 2010 layoff to select employees for layoff at any other Employer facility.

15. Copies of books, records, and other documents reflecting how the Employer selected the 11 criteria for rating drivers' performance used for the April 9, 2010 layoff at the San Leandro Facility.

16. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, time cards, employee personnel files, and complaints and/or commendations to drivers from the Employer, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for attendance.

17. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, time cards, employee personnel files, and complaints and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for communication.

18. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, time cards, employee personnel files, complaints and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for customer service.

19. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, driving records, accident reports, employee personnel files, complaints and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for driving skill.

20. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, employee personnel files, complaints and/or commendations to drivers from the Employer and/or from customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for efficiency.

21. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, time cards, employee personnel files, complaints and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for paperwork.

22. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, time cards, employee personnel files, complaints and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for punctuality.

23. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, time cards, employee personnel files, and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for reliability.

24. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, safety reports, accident reports, driving records, employee personnel files, complaints and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for safety procedures.

25. Copies of books, records, and other documents, including but not limited to payroll records, employee evaluations, discipline issued, employee personnel files, complaints and/or commendations to drivers from the Employer and/or customers, reviewed by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for teamwork.

26. Copies of books, records, and other documents, including but not limited to employee evaluations, discipline issued, vehicle reports, employee personnel files, complaints and/or commendations to drivers from the Employer and/or customers, used by Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala to arrive at the numerical

ratings they assigned to the Employer's San Leandro Facility drivers on Driver Rate Sheets in March 2010 for truck and driver appearance.

27. Copies of the complete personnel files or folders for Juan Espana, Victor Hernandez, Wilian Rivera, Julio Siquenza, Selvin Zecena, and Gustavo Rodriguez.

28. Copies of the 2008, 2009, and 2010 yearly performance reviews for each of the Employer's San Leandro Facility drivers employed as of April 9, 2010.

29. Copies of discipline, including but not limited to verbal warnings, write-ups, suspension, or discharge issued to the Employer's San Leandro Facility drivers during the period April 9, 2007 to April 9, 2010.

31. Copies of books, records, and other documents reflecting the name of each driver specifically assigned to report to Supervisors Terry Hales, Joel Ochoa, and/or Bobby Tauala as of April 9, 2010.

32. Copies of books, records, and other documents, including but not limited to manifest lists, customer complaints, and records of additional pick-ups, reflecting the number of missed stops made by San Leandro Facility drivers during the period April 9, 2009 through April 9, 2010.

33. Copies of books, records, and other documents, including but not limited to accident and vehicle incident reports, for all accidents involving San Leandro Facility drivers during the period May 16, 2009 to April 9, 2010, and reflecting the nature of the accident, the amount of damage caused by the accident, the dollar amount of the cost to repair damage caused by the accident, and whether the accident was an "at-fault" accident.

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**Attn: Custodian of Records  
Stericycle, Inc.  
1366 Doolittle Drive  
San Leandro, CA 94577**

**COMPLETE THIS SECTION ON DELIVERY**

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☐ Agent

☐ Addressee

B. Received by (Printed Name)

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**STERICYCLE, INC.**

**and**

**TEAMSTERS LOCAL 70**

**Case(s) 32-CA-25058**

**DATE OF MAILING: July 2, 2010**

**AFFIDAVIT OF SERVICE TO OPPOSITION TO THE CHARGED PARTY'S PETITION  
TO REVOKE INVESTIGATORY SUBPOENA**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid mail upon the following persons, addressed to them at the following addresses:

Mr. Arch Y. Stokes  
Shea Stokes Roberts & Wagner  
510 Market Street, 3rd Floor  
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Beeson Tayer & Bodine  
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Oakland, CA 94612  
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Lester A. Heltzer, Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N. W.  
Washington, DC 20005

**E-Filed**

Subscribed and sworn to before me this day 2nd of July 2010.

DESIGNATED AGENT

/s/ Shirley M. Owens

NATIONAL LABOR RELATIONS BOARD

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**STERICYCLE, INC.**

**and**

**Case 32-CA-25058**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AUTO TRUCK DRIVERS,  
LINE DRIVERS, CAR HAULERS, AND HELPERS,  
LOCAL NO. 70 OF ALAMEDA COUNTY, CALIFORNIA,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSMEN  
AND HELPERS OF AMERICA**

**OPPOSITION TO THE CHARGED PARTY'S PETITION  
TO REVOKE INVESTIGATORY SUBPOENA**

This matter is submitted to the Board based on the failure and refusal of Stericycle, Inc., hereafter the Employer, to fully cooperate in responding to an investigative subpoena issued by the Region in connection with its investigation of the above-captioned matter. The charge arises in the context of a 2008-2009 organizational campaign and January 16, 2009 representation election involving International Brotherhood of Teamsters, Auto Truck Drivers, Line Drivers, Car Haulers, and Helpers Local No. 70 of Alameda County, California, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereafter the Union, in Case 32-RC-5603. In the election, the Union was selected as the collective-bargaining representative of a unit of drivers employed by the Employer at its San Leandro, California facility, by a 23 to 12 vote. The certification of the Union is currently pending before the Board on the Employer's request for review of the April 24, 2009 Administrative Law Judge's Report on Objections.

## **Background**

The Employer is engaged in the pick-up and disposal of medical waste at numerous facilities throughout the nation. The subpoena *duces tecum* issued here concerns the Union's April 13, 2010 charge, alleging that the Employer, at its San Leandro, California facility, hereafter the San Leandro Facility, violated Sections 8(a)(1) and (3) of the Act on April 9, 2010, by laying off Union activists Wilian Rivera, Julio Siguenza, Victor Hernandez, Selvin Zecena, Juan Espana, and Gustavo Rodriguez in retaliation for their support for the Union and that the Employer violated Sections 8(a)(1) and (5) of the Act by unilaterally implementing its decision to layoff employees without bargaining with the Union over the decision and the effects of the decision to lay off San Leandro Facility unit employees while the petition in Case 32-RC-5603 is pending certification by the Board.<sup>1</sup>

On June 18, 2010, in furtherance of its investigation of the unfair labor practice charge, Region 32 issued a subpoena *duces tecum* to the custodian of records of the Employer. On June 25, 2010, the Employer filed a Petition to Revoke the subpoena. The following constitutes Region 32's Opposition to the Petition to Revoke.

Preliminarily, the Region has been informed that the Employer is endeavoring to gather some of the subpoenaed documents as this Opposition is being prepared and is negotiating with the Region as to how best to submit those documents. However, the Employer has indicated its refusal to provide certain other requested documents, as set forth more fully below.

The Union has presented evidence that on April 9, 2010, the Employer, without notification or bargaining, merged, eliminated, and transferred routes from recently

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<sup>1</sup> A copy of the charge is attached hereto as Exhibit 1.

acquired facilities in northern California, eliminated San Leandro Facility routes, eliminated bargaining unit positions, laid off seven San Leandro Facility drivers, and offered severance to those who waived claims under federal statutes, including under the Act, and agreed not to assist others in any such claims. The Union has also presented evidence to support its contention that six of the seven laid off drivers were known Union activists laid off in accordance with the Employer's early February 2009 alleged threat to terminate authorization card signers, "one-by-one." A central issue in the investigation is, therefore, whether the decisions to lay off employees and to select employees for lay off were discriminatory or justified by a defense under *Wright Line*, 251 NLRB 1083 (1980).

On May 3, 2010, the investigating Board agent sent a letter to the Employer's attorney advising it that the Union had presented its evidence in support of the charge, soliciting the Employer's response, and requesting the Employer to fully cooperate in the investigation by providing the Region with, inter alia, documents related to the Employer's acquisition of new facilities, documents reflecting the need for or explanation for the lay off, documents setting forth the criteria by which employees were selected for layoff, underlying documents reviewed by the Employer for the purpose of determining which employees would be laid off and which employees would be retained, internal communications on the subject of the need to layoff and the selection of which drivers to lay off, identification of the employees who have been assigned to cover the routes of the laid off drivers with an explanation for that assignment, and the personnel files of the laid off employees. These documents are necessary to determine whether there is a business justification for the decision to lay off and whether the drivers selected for layoff would have been selected even in the absence of their union activities.

On May 14, 2010, the Employer submitted a position letter and certain limited documents to the Region. In its position letter, the Employer asserted a *Wright Line* defense for the decision to lay off and the selection of which drivers to lay off on April 9, 2010. In particular, the Employer explained that it decided to lay off employees because it had acquired new facilities over the last year and desired to eliminate seven duplicative or overlapping San Leandro Facility routes to achieve greater efficiencies. It claimed that acquisition agreements with the acquired entities required the Employer to retain those employees and layoff the San Leandro Facility drivers. With respect to the decision as to which drivers to layoff, the Employer indicated that the seven laid off drivers were laid off because of their poor performance as demonstrated by the fact that they received the lowest numerical scores from three transportation supervisors regarding the following rating criteria: attendance, punctuality, reliability, paperwork, driving skill, safety practices, customer service, communication, teamwork, efficiency, and appearance self/truck.

The documents provided by the Employer included a North State Planning spread sheet with figures but no substantive narrative description or reference to underlying documents, driver rating sheets for the 35 San Leandro Facility drivers in which each driver was rated from one to ten on the above performance criteria, emails between and among Employer managers and the supervisors who were directed to rate the employees, including an email in which a human resource manager directed that personnel files be reviewed to support the rating of employees, and a document listing the total numerical scores received by each driver from the three transportation supervisor.

In the Region's view, the Employer's May 14, 2010 submission failed to provide the requested underlying documents regarding how the acquisition of new routes required the elimination of San Leandro Facility routes, underlying documentation used by the Employer to decide which employees to select for lay off and which to select for retention, internal communications regarding which employees would be selected for lay off and which would be retained, and documents identifying who has been performing the laid off driver's work. In sum, the Employer failed to fully cooperate in its response to the Region's request for documents and failed to support the assertions in its position letter regarding its alleged *Wright Line* defense.

#### **Argument**

At the outset of its Petition to Revoke, the Employer laments the nine unfair labor practice charges that have been filed against it which it claims have either been dismissed by the Region or withdrawn for insufficient evidence. Contrary to these assertions, on September 28, 2009, the Region issued Consolidated Complaint over numerous unfair labor practices alleged against the Employer in Cases 32-CA-24230 and 32-CA-24326. On April 9, 2010, the Consolidated Complaint was withdrawn by the Region because employee witnesses were reluctant to cooperate in trial preparation while they were still employed by the Employer at a time when it had not yet announced who it had selected for lay off. On May 7, 2010, the Union appealed the decision to withdraw the Consolidated Complaint, and the Office of Appeals remanded the cases to the Region on June 24, 2010 for further processing. The Employer also fails to note that in earlier investigations, its full cooperation was not provided until prior investigative subpoenas *duces tecum* and *ad testificandum* issued.

In the instant case, the Employer seeks limited revocation of the subpoena by first asserting that the subpoena is overly broad, not focused, not related to the investigation, and is more punitive than investigative. However, the Petition to Revoke fails to specify in any cogent fashion how the subpoena request is overly broad, and why any particular request is irrelevant, or punitive. The Petition to Revoke's failure of specificity alone warrants rejection of the asserted grounds for revoking the subpoena as the Employer proffers no evidence or explanation for its claim. Thus, the Employer's vague assertions here fail to satisfy its burden of showing by specific evidence that the subpoena is overbroad, irrelevant, and punitive. See *NLRB v. Dutch Boy, Inc.*, 606 F.2d 929, 932 (10<sup>th</sup> Cir. 1979); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 208-210 (1945); *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 114 (5<sup>th</sup> Cir. 1982).

Furthermore, as the party resisting compliance, the Employer bears the burden to demonstrate that compliance would require undue burden. See *FDIC v. Garner*, 126 F.3d 1138, 1145 (9<sup>th</sup> Cir. 1997) (citing *United States v. Stuart*, 489 U.S. 353, 360 (1989)). As noted above, the Petition to Revoke fails to articulate a single request that is burdensome and has clearly failed to meet that burden. Because most subpoenaed parties will claim that preparing and presenting subpoenaed documents creates a burden, the Courts have established that this burden "is not easily met." *Maryland Cup Corp.*, 785 F.2d 471, 477 (4<sup>th</sup> Cir. 1986), cert. denied, 479 U.S. 815 (1986).<sup>2</sup> Indeed, the courts have made clear that "[s]ome burden on subpoenaed parties is to be expected and is necessary in the furtherance of the agency's legitimate inquiry and the public interest .... The

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<sup>2</sup> See also *North Bay Plumbing, Inc.*, 102 F.3d 1005, 1008 (9<sup>th</sup> Cir. 1996); *Interstate Dress Carriers*, 610 F.2d 99, 112 (3<sup>d</sup> Cir. 1979) ("[T]he burden on the party to whom the subpoena is addressed is not a meager one").

question is whether the demand is *unduly* burdensome or *unreasonably* broad.” *FTC v. Texaco*, 555 F.2d 862, 882 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977) (emphasis in original). To demonstrate undue burden, the subpoenaed parties must show that compliance with the subpoena “would seriously disrupt its normal business operations.” *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 477 (4th Cir. 1986), cert. denied, 479 U.S. 815 (1986). See also *Valley Industrial Services, Inc. v. EEOC*, 570 F. Supp. 902, 907 (N.D. Cal. 1983) (disruption of business operations is the appropriate standard, since “[e]very employer investigated . . . may feel that compliance [with a subpoena] is burdensome”).<sup>3</sup> As set forth below, the Employer has failed to establish that its business operations will be disrupted in any way by compliance with the subpoena requests.

With regard to subpoenaed paragraph 1, copies of all acquisition contracts between the Employer and Med Waste Disposal, Advanced Waste Solutions, Integrated Waste Control, and Med Tech, the Employer claims that the request is irrelevant, beyond the scope of the investigation, and seeks confidential information. However, the Employer’s defense to the underlying charge is based on its claim that it acquired new facilities in northern California with routes which overlapped the San Leandro Facility routes and that the acquisitions justified the need for a layoff in northern California, and, in particular, at the San Leandro Facility. Therefore, the acquisition agreements are central to the validity of the Employer’s defense. Moreover, in its position letter, the Employer stated that the acquisition agreements with the acquired entities required the

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<sup>3</sup> This standard has been adopted in a number of circuits. See, e.g., *FTC v. Rockefeller*, 591 F.2d 182, 190 (2d Cir. 1979); *NLRB v. Baker*, 1998 WL 827373, 4 (4th Cir. 1998) (unpublished opinion); *NLRB v. Carolina Food Processors*, 81 F.3d 507, 513 (4th Cir. 1996); *United States v. Chevron U.S.A., Inc.*, 186 F.3d 644, 649 (5th Cir. 1999); *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 114 (5th Cir. 1982); *EEOC v. A.E. Staley Mfg. Co.*, 711 F.2d 780, 788 (7th Cir. 1983), cert. denied, 466 U.S. 936 (1984); *EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1040 (10th Cir. 1993); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1090 (D.C. Cir. 1992), cert. denied, 507 U.S. 910 (1993).

Employer to retain the acquired entities' employees, and the Employer, therefore, selected San Leandro Facility employees for layoff to avoid inefficiencies. The subpoena appropriately requests "all" acquisition agreements because the Region seeks no less than each acquisition agreement between the Employer and the four named entities in its position letter. The acquisition agreements are necessary to confirm and support the Employer's defense that it had no option but to layoff San Leandro Facility employees on April 9, 2010. With regard to the Employer's claim that the acquisition agreements are confidential, the Employer's assertion of confidentiality is also without merit because the Employer has failed to proffer any specific evidence or identify any part of the acquisition agreements that should be withheld on the basis of privacy or confidentiality. Therefore, it cannot be concluded that confidentiality or privacy interests exist. NLRB v. Dutch Boy, Inc., 98 LRRM 2396, 2398 (W.D. Okla. 1978), aff'd 606 F.2d 929 (10<sup>th</sup> Cir. 1979). The Employer's petition to revoke the Region's request for the acquisition agreements should be denied.

With regard to subpoenaed paragraphs 4, 5, 6, and 7, the Employer seeks to revoke the Region's request for records showing the names of the customers on gained routes, overlapping routes, eliminated routes and relocated routes as a result of the Employer's acquisition of Med Waste Disposal, Advanced Waste Solutions, Integrated Waste Control, and Med Tech. In its position letter, the Employer claimed it eliminated seven routes in the Employer's San Leandro district. The customer information is relevant for the purpose of identifying the overlapping, eliminated, gained, or relocated routes so that the Employer's business justification can be analyzed by the Region to determine the validity of the Employer's *Wright Line* defense. The Employer protests that

the Region has asked for its customer list. On the contrary, the Region does not seek the Employer's customer list. Rather, the Region seeks only the names of customers on overlapping, eliminated, gained or relocated routes related to the Employer's acquisition of Med Waste Disposal, Advanced Waste Solutions, Integrated Waste Control, and Med Tech. The request is narrowly tailored to provide necessary relevant information to Region's investigation.

With regard to subpoena paragraph 9, which seeks documents, including payroll records and time cards, to establish the amount of overtime worked by drivers at the San Leandro Facility in the three months before the layoff and the three months since the layoff, the Employer seeks to revoke the subpoena on the basis that it will result in the production of 420 separate pay period reports. Maintaining documents such as payroll records and time cards in an easily retrievable format is basic business practice for a nationwide operation of the Employer's size and sophistication, and the Employer has failed to address how producing 420 separate pay period reports presents an undue burden to it. The Employer also seeks revocation of this request by seeking to limit production of overtime records to the time period prior to the layoff. However, the amount of overtime worked by the Employer at its San Leandro Facility since the layoff is highly probative as to whether the layoff of the seven drivers was warranted as the Employer asserts in its defense to the charge. Therefore, subpoenaed payroll records and time cards for the post-layoff period for all drivers employed by the Employer after April 9, 2010<sup>4</sup> are necessary for the Region to conclude its investigation of the charge.

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<sup>4</sup> The Employer concedes in its position letter that it announced which employees had been selected for layoff on Friday, April 9, 2010, their last day of work. However, on page 5 of its Petition to Revoke, the Employer repeatedly and erroneously refers to April 14, 2010 as the last date of employment of the laid off employees.

Similarly, the Employer seeks to revoke production of time cards requested in subpoenaed paragraphs 16, 17, 18, 21, 22, and 23. These paragraphs seek the underlying documents reviewed by the Employer's supervisors to determine what rating to give drivers for the criteria regarding attendance, communication, customer service, paperwork, punctuality, and reliability. If the Employer's supervisors did not review time cards and other payroll records to determine their ratings for drivers for these criteria, the Region does not seek their production. If, however, the supervisors reviewed such data to carefully assess the objective record in reaching their determinations on how to rate employees, particularly with layoff in the balance, these documents are relevant, necessary, and highly probative for the Region to complete the investigation.

With regard to the information subpoenaed in paragraphs 16 through 33, the Employer appears to petition for the revocation of the subpoenaed information as it applies to the 28 drivers who were not laid off on April 9, 2010. The Employer's position is wholly without merit. In an alleged discriminatory lay off, it must be determined whether an employer has acted discriminatorily by selecting employees for lay off on the basis of their union and/or protected concerted activities rather than objective performance criteria or other work-related considerations. Here, the Employer has asserted in its position letter that the laid off employees were selected based on their ratings in 11 criteria which demonstrated that they were the poorest performing drivers at the San Leandro Facility. Therefore, the Region must be able to review documents establishing the work records of the laid off employees as well as the 28 employees who were not selected for layoff to compare the work records. If the Employer's supervisors reviewed underlying documents to aid them in their numerical rating of any of the 35 San

Leandro Facility drivers regarding the 11 rating criteria, those underlying documents are relevant and should be produced as requested in subpoena paragraphs 16 through 26. The Employer describes the request as a “wide swathe of documents.” However, these requested documents are particularly relevant, and the Employer has presented no specific evidence as to how providing these documents would be unduly burdensome. It should be noted that emails submitted by the Employer demonstrate that on March 18, 2010, a manager gave out 35 blank rating sheets to each of the Employer’s three transportation supervisors and directed them to rate the drivers on a scale of one to ten. The rating sheets were promptly completed by supervisors by March 26, 2010, about a one-week period. The Employer was able to gather whatever documentation was reviewed by the rating supervisors in a one-week time period. The Employer is simply being required to retrieve that information again, this time pursuant to the Region’s subpoena.

The Employer also seeks to limit production of other work and performance records requested in subpoena paragraphs 28, 29, 32, and 33 to information about the laid off employees only. These documents are needed to test the objectivity of the supervisors ratings as to all 35 drivers and to aid the Region in determining whether the employees selected for lay off would have been selected for lay off in the absence of their union activities. Accordingly, the Employer’s petition to revoke should be denied and performance records for all 35 San Leandro Facility drivers employed on April 9, 2010, including employee performance reviews requested in subpoena paragraph 28, discipline records requested in subpoena paragraph 29, missed stop reports requested in subpoena

paragraph 32, and records regarding drivers' accidents requested in subpoena paragraph 33 should be produced.

In the final section of the Petition to Revoke, the Employer raises additional objections to the production of documents requested in subpoena paragraphs 16 through 26 for the underlying documents reviewed by transportation supervisors in reaching their decisions over what rating to give drivers in the rating criteria regarding attendance, punctuality, reliability, paperwork, driving skill, safety practices, customer service, communication, teamwork, efficiency, and appearance self/truck. The Employer argues that the requests are duplicative, vague or unclear and that it will only provide "one copy of the relevant records." The Employer's petition to revoke should be denied and it should provide the documents reviewed by each of the three transportation supervisors, as requested by the subpoena, in reaching their rating decisions regarding all 35 drivers, in each rating criteria, nothing less.

Although subpoena paragraph 27 is subsumed by the Employer's request to revoke subpoena paragraphs 16 through 33, the Employer does not advance any specific reasons to revoke subpoena paragraph 27 which seeks the personnel folders of named laid off drivers. These documents are relevant to the Region's investigation and the Employer's petition to revoke with respect to them should be denied.

Finally, with regard to subpoena paragraph 31, the Employer seeks to revoke the Region's request for documents reflecting the names of the drivers who report to each transportation supervisor on the basis that the supervisors rotate through different schedules on a weekly basis. The Employer should be required to produce records establishing the names of employees assigned to each transportation supervisor based on

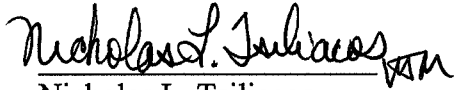
the rotation schedule as of April 9, 2010 and its petition to revoke subpoena paragraph 33 should be denied.

**Summary**

In sum, Section 102.31(b) provides that the Board shall revoke an investigatory subpoena if the evidence sought does not relate to any matter under investigation, if the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. *American Postal Workers Union Local 64*, 340 NLRB No. 98 (2004). For the reasons set forth above, none of these criteria are met here by the Employer and its Petition to Revoke should be denied in its entirety.

**DATED AT** Oakland, California this 2<sup>nd</sup> day of July 2010.

Respectfully submitted,

  
Nicholas L. Tsiliacos  
Board agent  
National Labor Relations Board  
Region 32  
1301 Clay Street, Room 300N  
Oakland, CA 94612-5224

INTERNET  
FORM NLRB-501  
(2-08)UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case

32-CA-25058

Date Filed

04-13-2010

## INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

## 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer  
Stericycle Inc.

b. Tel. No. (510) 562-1781

c. Cell No.

d. Address (Street, city, state, and ZIP code)

1366 Doolittle Drive  
San Leandro, CA 94577e. Employer Representative  
Arch Y. StokesShea, Stokes, Roberts & Wagner  
510 Market Street, 3rd Floor  
San Diego, CA 92101-7025

f. Fax No.

g. e-Mail

h. Number of workers employed

i. Type of Establishment (factory, mine, wholesaler, etc.)  
Warehousej. Identify principal product or service  
Medical Waste

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (3), (5)

of the National Labor Relations Act, and these unfair labor

practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

## 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The employer discriminated against employees Wilian Rivera, Julio Siguenza, Victor Hernandez, Selvin Zecena, Juan Espana, and Gustavo Rodriguez by laying them off from employment on April 9, 2010 for the purpose of discouraging membership in the Teamsters Union. The employer took the foregoing action to interfere with, restrain or coerce employees in the exercise of their Section 7 rights.

The employer's action also constituted a unilateral change over the terms and conditions of work as the employer failed to bargain over the layoffs.

COPY SENT NLRB

Date 4.13.2010 By ASC

## 3. Full name of party filing charge (if labor organization, give full name, including local name and number)

Teamsters Local 70

4a. Address (Street and number, city, state, and ZIP code)

Teamsters Local 70  
Dominic Chiovare  
400 Roland Way  
Oakland, CA 94621

4b. Tel. No. (510) 569-9317

4c. Cell No.

4d. Fax No. (510) 569-1906

4e. e-Mail

ibt70@aol.com

## 5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters

## 6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By

(signature of representative or person making charge)

Jason Rabinowitz, Attorney

(Print/Type name and title or office, if any)

Tel. No.

(510) 625-9700

Office, if any, Cell No.

Fax No. (510) 625-8275

e-Mail

jrabinowitz@beesontayer.com

1404 Franklin Street, 5th Floor, Oakland CA. 94612

4/12/2010

(date)

Address

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit 1